

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FRANK MANUEL HERNANDEZ,

Case No. 3:20-cv-00114-MMD-CSD

Plaintiff,

ORDER

v.

PERRY RUSSELL, *et al.*,

Defendants.

Pro se Plaintiff Frank Hernandez brings this action under 42 U.S.C. § 1983.¹ Before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Craig S. Denney (ECF No. 158), recommending that the Court grant Defendants’ motion for summary judgment (ECF No. 140). Hernandez had until May 20, 2024 to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R and grants Defendants’ motion for summary judgment.

Because there is no objection, the Court need not conduct *de novo* review. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original). Here, Judge Denney recommends granting Defendants’ motion for summary judgment because: (1) Lennon did not violate Plaintiff’s Eighth Amendment rights because, even assuming Lennon did point a laser that briefly tracked across Plaintiff’s eye, any use of force would amount to no more than a *de minimis* use of force, and there is no evidence Lennon used the laser maliciously or sadistically to harm (ECF No. 158 at 9-10); (2) Craig did not violate Plaintiff’s Eighth Amendment rights because there is no evidence that Craig

¹The remaining Defendants are Lennon and Craig.


1 knew what Lennon was doing or that he could have intervened (*id.* at 11); (3) Plaintiff has
2 not met his burden to prove that the right allegedly violated was clearly established at the
3 time of the violation (*id.* at 12); and (4) Defendants are therefore entitled to qualified
4 immunity (*id.*). The Court is satisfied that Judge Denney did not clearly err in his analysis.
5 Having reviewed the R&R and the record in this case, the Court will adopt the R&R.

6 It is therefore ordered that Judge Denney's Report and Recommendation (ECF
7 No. 158) is adopted.

8 It is further ordered that Defendants' motion for summary judgment (ECF No. 140)
9 is granted.

10 The Clerk of Court is directed to enter judgment accordingly and close this case.

11 DATED THIS 28th Day of May 2024.

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14 MIRANDA M. DU
15 CHIEF UNITED STATES DISTRICT JUDGE
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